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United Nations Verification Mission in Guatemala

Note by the Secretary-General

1. The attached document contains the report on Human Rights of the United Nations Verification Mission in Guatemala (MINUGUA) on the verification of compliance with the Comprehensive Agreement on Human Rights. In accordance with the practice established since the Mission's inception, I shall convey a copy of this report to the United Nations High Commissioner for Human Rights, with the request that it be transmitted to the members of the Commission on Human Rights.

2. The report, which is being transmitted by the head of the Mission, is the tenth on the subject, and covers the period from 1 January to 30 November 1999, during which the Mission continued to carry out its work and verify compliance with the commitments of all the Peace Agreements. The results of the verification of compliance with the Agreements were reported to the General Assembly on 11 November 1999 (see A/54/526).

3. I wish to reiterate my thanks to the Government of Guatemala and to the Unidad Revolucionaria Nacional Guatemalteca (URNG) for their cooperation with the Mission, without which it would have been unable to function. I also wish to express my gratitude for the ongoing collaboration and support provided by Member States and the United Nations system in Guatemala.

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Annex

Tenth report on human rights of the United Nations Verification Mission in Guatemala

I. Introduction

1. During the period covered by this report (1 January to 30 November 1999), the United Nations Verification Mission in Guatemala (MINUGUA) continued to verify compliance with all the Peace Agreements signed between the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG). Among the Agreements, the Mission verifies compliance with the Comprehensive Agreement on Human Rights, signed on 29 March 1994 (A/48/928-S/1994/448, annex I) and with the human rights aspects of the Agreement on Identity and Rights of Indigenous Peoples, signed on 31 March 1995 (A/49/882-S/1995/256, annex).

2. In view of the importance of the enjoyment of the human rights that were included in the Comprehensive Agreement, the Mission is continuing to issue a specific report on the subject. This report also refers to the commitments under the Comprehensive Agreement which were not included in the Agreement on the Implementation, Compliance and Verification Timetable for the Peace Agreements (A/51/796-S/1997/114, annex I).

3. In order to permit continuity of statistical comparison with the eighth and ninth reports (A/52/946, annex and A/53/853, annex), the figures on complaints received and the results of verification of the complaints will cover a period of nine months (1 January to 30 September 1999). Among the most significant aspects up to 30 November 1999, special mention should be made of the verification of political rights in the context of the first round of the general elections of 7 November 1999. Issues such as compensation and compliance with the recommendations of the Clarification Commission (see A/53/928, annex) were dealt with at length in the Mission's fourth report on the verification of compliance with the Peace Agreements (see A/54/526, paras. 4 and ff and 17 and ff).

II. Context in which the Mission carries out its activities

Commitment I. General commitment to human rights

Analysis of verification of the rights accorded priority under the Comprehensive Agreement

4. As stated in the preceding paragraph, the figures considered for the period in question show that, during the first nine months of 1999, the Mission admitted 316 complaints involving 3,549 alleged violations of the rights accorded priority under the Comprehensive Agreement; 4,781 violations were confirmed. As in the previous report (A/53/853, annex, para. 11), the figures on confirmed violations correspond to complaints admitted during the period under review and also during previous periods (see appendix). Verification reveals that the number of confirmed violations was considerably higher than in the previous period. This is due, in part, to the large number of violations of the legal duty of the State to prevent, investigate and punish, stemming from cases admitted during previous periods, regarding massacres and disappearances. The comprehensive qualitative analysis indicates an increase in the practice of torture and cruel, inhuman or degrading treatment. It also shows an increase in violations of the right to individual liberty, due process of law, political rights and of the right to freedom of association and assembly.

Right to life

5. During the period under review, 59 complaints involving 109 alleged violations of the right to life were admitted and the existence of 77 violations was verified; this represents a slight decrease in the number of violations confirmed compared to the previous period. In the violations reported and confirmed during the current period, responsibility falls mainly on the National Civil Police and auxiliary mayors.

6. Among the extrajudicial executions confirmed, of those for which the National Civil Police bears direct responsibility, special mention should be made of cases where a person, after being arrested for drunkenness or disorderly conduct, winds up dead on arrival or dies shortly after being admitted to hospital, presumably after being

beaten by the arresting officers. In addition, cases of deaths due to excessive and disproportionate use of regulation firearms have been established. The Mission has also established that some members of the national Civil Police have obstructed justice in cases of violations of the right to life committed by police officers.

7. Following is an example of the serious consequences of the disproportionate use of force. On 20 February, in the Santa Luisa housing estate, zone 6 of the capital, National Civil Police officers Gerson de Rosa Rodríguez and Neftali López Salguero, of the police station in that estate, went in pursuit of Noé Vicente Gómez and another unidentified man who had allegedly just robbed a bus. In their flight the men burst into a butcher's shop where Gómez threw a revolver behind the counter. The officers arrested Gómez and the other suspect, but they also arrested Santiago Rafael Ruiz, who happened to be doing some shopping, and put them all in the police car. Witnesses heard two shots and saw Santiago Rafael Ruiz with his face covered in blood. The men were taken to a place known as Joya de Zabahú, where witnesses saw the officers hit Ruiz; the witnesses were then threatened and were compelled to leave. Shortly thereafter they heard a number of gunshots and saw other police units arrive. The victim, gravely wounded, was taken to San Juan de Dios General Hospital where he died. The Mission established that the immediate superiors of the two officers, far from seeking to clarify what had happened, gave an account of the incident describing it as a confrontation between "maras" (gangs) and that the officers were not punished. Following an internal investigation carried out by the National Civil Police Office of Professional Accountability, the officers were suspended from their duties and brought before the court.

8. With regard to the cases where the responsibility lay with municipal authorities, special attention should be drawn to an incident which took place on 1 March in Río Bravo, Suchitepéquez, in which the mayor, Onésimo Hernández Natareno, shot and wounded Francisco Mazariegos Linares, a child of 13. The incident took place when the mayor, who was drunk, entered a café where the boy was with his father. Minutes after boasting about being the mayor, in an effort to secure prompt service, he fired a shot which went through the café's ceiling. The mayor apparently became enraged when a waiter approached the boy to serve the dinner and he fired another shot towards the table. The bullet, which was fired at close range, went through an aluminum pot and entered the child's shoulder. According to the forensic medical report, the wound "involved the right lung and caused bleeding in the chest and lungs". The mayor tried to resist arrest and struck the national Civil Police officer, José Antonio Torres, breaking his nose. He also uttered repeated death threats against the boy's father and the owner of the café for having called the police. He was tried on charges of attempted murder, assault and uttering threats. However, on 22 March the child's parents requested that all charges be dropped, forgoing all remedy, claiming that it had been an accident and that the union had helped them with their son's medical bills. On 1 May, the police officer, for his part, submitted a petition requesting that the charges be dropped, also stating that the whole thing had been an accident and that the mayor had nonetheless helped him to pay his medical bills. On 10 August, the prosecutor requested that the case be dismissed and the court of first instance granted the request. The mayor was re-elected on 7 November.

9. Respect for minimum legal safeguards of anyone tried for an offence becomes a matter of vital importance in cases where the death penalty could be applied, due to the gravity and irreversible nature of that penalty. The Mission established that courts continued to sentence people to death following trials in which the right of the accused to minimum legal safeguards had not been respected. Moreover, in four cases, involving 16 people (51 per cent of those convicted) the penalty was imposed in violation of article 46 of the Constitution of the Republic which states that international human rights treaties ratified by Guatemala shall take precedence. The Mission notes that application of the death penalty in those circumstances is tantamount to summary execution.

Right to integrity and security of person

10. During the period under review, 64 complaints involving 213 alleged violations of this right were admitted; 127 violations were confirmed. Compared to the previous period there was an overall decrease in the number of violations (from 170 to 127); this is attributed primarily to the drop in the number of violations involving excessive use of force. On the other hand, confirmed violations involving torture increased from 10 to 27, those involving inhuman or degrading treatment went from 6 to 46 and those involving ill treatment from 26 to 35. In the confirmed violations National Civil Police officers were most often the ones responsible.

11. The Mission verified complaints of torture, from some departments, inflicted by officers of the National Civil Police Criminal Investigation Service. The cases verified follow the same pattern: use of oilcloth hoods, blows and death threats by police operatives assigned to breaking up bands of robbers, obtain information about kidnappings, extortions and even, in one instance, the theft of two

electronic devices. In order to provide legal justification for the arrests, in most cases the reason for the arrest was altered on the police reports and this resulted in an obstruction of justice. At the same time, the immediate superiors of the officers involved did not order that an investigation be opened in order to determine the responsibility of the latter in these serious violations.

12. On 13 January, in the vicinity of the La Quinta commercial centre, zone 7 of the capital, Ana Alvarado García was arrested by officers of the Criminal Investigation Service who were conducting an operation to arrest perpetrators of an extortion. She stated that she was taken to the cemetery in zone 3 where a burn was inflicted on her. She was then taken to National Civil Police headquarters where other people were being held for the same offence and was later taken to Santa Teresa prison. According to the forensic medical report she had bruises in the area surrounding the left eye socket, a subconjuctival haemorrhage in the left eye and various bruises on the left leg. During the investigation, there was no reaction from either the Public Prosecutor's Office or the court in charge of the investigation to the signs of torture or to the fact that the latter had occurred while she was in the custody of State officials. The Office of Professional Accountability belatedly initiated an investigation; the outcome of the investigation is not yet known.

13. Among the cases of cruel, inhuman or degrading treatment which have been confirmed by the Mission and for which the National Civil Police is responsible, one which occurred on 31 December 1998 at Puerto San José, Escuintla, stands out. At 10.30 in the morning, officers Edwin Gaitán Hernández and Franco Rodas de León arrested Moisés Rivas Morales and took him to the National Civil Police citizens service office on the pretext that they had to meet an officer from that police station. The Mission confirmed that the individual in question did not enter the cells until more than six hours later. When he was placed in the cell his hair had been hacked off with scissors and he had head injuries; according to eye witnesses these injuries had been inflicted with a leather whip by Deputy Inspector Álvaro Nájera Castro. The man was transferred to Escuintla National Hospital where his injuries were found to be very serious. In the police report the arresting officers stated that Moisés Rivas had been arrested on charges of disorderly conduct and drunkenness. The criminal court determined that the arrest had been unlawful and ordered that the man be released immediately. The Office of Professional Accountability concluded that Deputy Inspector Álvaro Nájera Castro and officers Oswaldo Gaitán Hernández, Franco Eduardo Rodas de León, Carlos Hernández Ceballos and Aníbal Contreras Tobar, among others, were responsible for the arbitrary arrest and the very serious injuries and for the ill-treatment of other prisoners who were at the time in the police cells at Puerto San José. The Office found the instruments used to ill treat the arrested persons, including the leather whip and a pair of scissors, in the possession of the officers.

Right to individual liberty

14. During the period under review, 17 complaints were admitted involving 124 alleged violations; 125 were confirmed. The number of confirmed violations increased from the previous period going from 34 to 56 in the case of arbitrary arrests, from 25 to 67 in the case of arrests in violation of legal guarantees and from 0 to 2 in the case of kidnapping. The National Civil Police, the judiciary and the municipal authorities are most often the ones responsible for the confirmed violations.

15. The Mission is concerned at the considerable increase in the number of violations of this right, most of which involve arbitrary arrests and arrests in violation of legal guarantees carried out mainly by the National Civil Police. This situation is particularly serious because these arrests are usually accompanied by violations of the right to integrity of person and, in many cases, justice is obstructed through the falsification of police reports. The Mission reaffirms what it said in its previous report (A/53/853, para. 26), namely, that inaction of the institutions responsible for investigating and punishing the perpetrators of these violations is a constant feature. The responsibility of the judiciary stems from the fact that the judges do not safeguard the right to due process of persons who have been unlawfully or arbitrarily arrested since they usually simply confirm these deprivations of liberty based on the police report, without looking into whether there has been any violation of the right to individual liberty or to integrity of person.

16. A case in point occurred in June in San Pedro Yepocapa, Chimaltenango, when the brother and cousin of an arrested person went to the National Civil Police station to find out what had happened, and were likewise handcuffed and arrested. According to the police report the three were arrested when they were caught in a drunken state, attacking an individual, punching and kicking him in an attempt to rob him. The three arrested individuals said that while they were in handcuffs they were beaten with a blunt instrument in the presence of the chief of the police station, Cándido Saúl Sub Guerra. The forensic medical report states that the arrested persons had respectively "contusion in eye with bruises on both eyelids, haemorrhage

of the right sclera, contusion in the region of the left parietal bone and bruises on the left eye", "stitches on the left cheek, contusion on lower left jawbone and sprained right ankle" and "contusion in the region of the occipital bone, abrasions on gluteus on left buttock and bruised elbow". According to a statement made by the mother of the arrested brothers, she went to the police station the day of the incident to find out why the men had been arrested and the officers threatened to arrest her, too, if she did not go away.

Political rights

17. On 16 May a referendum was held with a view to ratifying the constitutional reforms approved by the Congress of the Republic in response to the commitments undertaken in the Peace Agreements. In the lead-up to the referendum, the Mission concentrated on publicizing the points in the reforms of greatest importance to the peace process: multiculturality, administration of justice, public safety, the army, and other State reforms. In addition, it supported the public information and civic education efforts of the relevant State institutions and other agents of civil society. About 18.55 per cent of the population voted in the referendum. In order to monitor the exercise of political rights, the Mission was present in 261 municipalities throughout the country.

18. When the general elections of 7 November were scheduled, the Mission placed special emphasis on the performance of State institutions in guaranteeing and respecting political rights, inasmuch as such rights are exercised on a mass scale in the electoral process. Monitoring focused on the possible existence of discrimination in the form of intimidation and bias, as well as propaganda on the part of State agents. As already stated, the Mission regrets that the first elections since the signing of the Peace Agreements were conducted without the adoption of the necessary reforms of the electoral system and political parties, although such reforms had been duly submitted to the Congress by the Supreme Electoral Tribunal.

19. In June, the Tribunal launched a massive registration plan. Its encouraging results have helped to reduce the large number of unregistered – and thereby disenfranchised – people. In addition to monitoring the plan, the Mission provided logistical support specifically aimed at the most inaccessible areas. During the election campaign, the Mission observed over 200 public acts of political propaganda throughout the country. As compared to 1995, there were fewer incidents of physical violence accompanying such activities. On the other hand, there was a high level of verbal violence, with systematic personal attacks that impeded the necessary public debate of government programmes.

20. During the electoral period, MINUGUA investigated over 200 complaints and incidents. In many cases, the complainants failed to provide the minimum information needed for a determination as to plausibility. On the other hand, in several cases distorted information was provided for the sake of political effect. It was noted, moreover, that the publicizing of this type of complaint through the mass media gave the population a negative and distorted image of the electoral debate. Among the complaints received were isolated reports of physical attacks and threats, some of them attributed to senior State officials and candidates for election. Especially worrying were the various reports of threats against officials of the Supreme Electoral Tribunal. There were also reports of threats or intimidation against members of political parties or candidates.

21. The Mission paid special attention to the possibility of bias and propaganda on the part of State agents, a matter on which several political organizations expressed concern. Most of the complaints were about the use of official vehicles in campaigning and party propaganda activities, the display of party colours on public buildings, and party propaganda at the inauguration of projects. The most serious complaints were about pressure or inducements to get residents of the capital to join a political party – in exchange for legal tenure of land or under the threat of loss of land. In a public communiqué issued on 29 September, the Mission noted that the State had been responsible in several cases for the use of public funds for electoral purposes. The information was brought to the attention of the Supreme Electoral Tribunal and the political parties concerned.

22. On 7 November 1999, election day, the Mission was present throughout Guatemala, serving as a deterrent to any potential conflicts, and helping to create a climate free of violence and intimidation. On that day, the Mission toured 286 of the country's 330 municipalities, visiting 750 polling stations. Its observations suggested that in nearly 80 per cent of the municipalities visited, political rights were exercised under normal conditions, with the restrictions imposed by current election law. Notwithstanding, without prejudice to the election results, it was observed that in just under 20 per cent of the municipalities, minor problems occurred, such as charges and countercharges of votes being bought and irregularities surrounding some ballot boxes.

23. The allegations with the greatest public repercussions had to do with the possibility of electronic fraud and claims that the municipal authorities impeded public transport in

the capital on election day. The Mission carried out ample investigations into both sets of allegations and concluded that there were no violations. With respect to impediments to public transport, although there were some problems, they did not last long, they did not affect voter turnout and they cannot be attributed to the municipal authorities. Another major development was the decision by the Quetzaltenango Departmental Electoral Board to declare null and void the election for Mayor of Quetzaltenango, on the grounds that votes had been bought. The Supreme Electoral Tribunal, as an appellate body, rescinded the decision and validated the results of the municipal elections. Its investigation enabled it to establish that there was an incident between members of the Xel-Jú Civic Committee or its sympathizers and the President of the Departmental Board, in the course of which she and one of her companions were wounded. At the same time, the investigation did not produce sufficient evidence to support the allegation that votes had been bought.

24. Lastly, as a contribution to the deferred debate on the amendment of the Elections and Political Parties Act, the Mission plans to issue a special report on the exercise of political rights in the context of the referendum and the general elections, which will include the results of the monitoring of the second round, scheduled for 26 December.

Right to freedom of expression

25. During the reporting period, the Mission continued paying close attention to the exercise of the right to freedom of expression, with special reference to allegations of interference by the Government in the advertising operations of publishers critical of its performance (see A/52/946, annex, paras. 49 and 50). To date, insufficient information has been obtained for any conclusive ruling.

26. Following public statements by the Director for Central America of the non-governmental organization Casa Alianza, disclosing the results of an investigation conducted by Casa Alianza and the National Public Prosecutor's Office into irregularities in the adoption process, legal action was taken for libel, slander and defamation (see A/52/946, annex, para. 59). The plaintiff was Susana Luarca de Umaña, whom the statements had named in her official capacity as a notary public as one of the main persons responsible for the situation. In monitoring the right to due process, the Mission noted the dismissal of amparo applications filed by the defendant in order to have a court of honour hear the case, as provided in article 35 of the Constitution, which states explicitly that publications containing allegations, criticisms or charges against public officials and employees for actions performed in an official capacity shall not be culpable, and that such cases shall be heard by a court of honour. The Mission is troubled by the ruling of the Constitutional Court, the supreme organ in respect of amparo applications, to the effect that the applicant cannot invoke the Act governing Expression of Thoughts, since it had not served as a disseminator of information or opinions. The Court thus restricted the interpretation of the article of the Constitution that expressly refers to the procedure to be followed when the object of a complaint is a public official, while laying down no type of requirement for the complainant.

27. The Mission considered with particular attention the allegations of threats against journalists investigating irregularities involving State agents, as well as allegations of further attacks on media offices. Specifically, representatives of an evening newspaper claimed that they were the victims of a government policy of harassment. On 17 January, unknown intruders entered their offices and stole a safe containing administrative documents and journalistic material. The police apprehended several individuals, who were charged with aggravated robbery. In the circumstances, it is not possible to discount the ordinary motive; nor is it possible to rule out the possibility of selective action aimed at limiting the right of freedom of expression.

28. The Mission received complaints that government officials had informed a staff member of a national daily newspaper that the Government was uncomfortable with the criticism appearing in its editorials; they had warned that such criticism must cease. At the beginning of May, two of the newspaper's reporters alleged that they were being harassed and followed both on foot and in vehicles. They claimed that they were followed on several occasions, on their way to work, during the working day and on different days, and that this created a feeling of insecurity. They stated that they were engaged in highly sensitive investigative journalism on cases allegedly involving irregularities on the part of State officials. The Mission verified that the number plate of one of the vehicles following the journalists belonged to the Presidential General Staff, and that another belonged to the National Electricity Institute, a semi-autonomous State institution.

Right to freedom of association and assembly

29. During the period under review, the Mission received eight complaints concerning 1,003 alleged violations. It confirmed 357, of which 355 had to do with the right to organize. The presumption of responsibility for the confirmed violations rests mainly with the judiciary and with the executive branch. As compared with the preceding period, the total number of confirmed violations rose from

303 to 357. The most significant qualitative variation is that violations of the right to organize account for 99.44 per cent of the total, as against 59.08 per cent in the preceding period.

30. The exercise of the right to organize continued to be affected by anti-union practices, most prominent among which was the dismissal of workers for forming unions, for filing collective grievances or simply for engaging in union activities. The Mission documented the failure to comply with judicial reinstatement orders handed down after protracted industrial proceedings. That is what happened at La Violeta estate, Colomba Costa Cuca, Quetzaltenango, where 38 workers were fired after filing a collective grievance, and at the Nueva Florencia estate, Coatepeque, Quetzaltenango, where 32 workers who were forming a union were fired. The Mission also noted the reluctance of the Ministry of Education to reinstate leaders of teachers' unions (as in the case of the President of the National Association of Middle School Educators (ANEEM), Daniel Minera), and to allow unimpeded participation in union activities (as in the case of Carlos Gómez, also a leader of ANEEM). In both cases, the Ministry alleged administrative breaches under article 76, paragraph 6, of the Civil Service Act (absence from work without authorization or justification), when the individuals were engaged in representative functions and had authorization from their superiors. The Civil Aeronautics Authority (DAC) refused for over a year and a half to comply with judicial resolutions ordering the reinstatement of Germán Rojas, Deputy Secretary-General of the DAC Workers' Union, who was dismissed on 17 January 1997, despite the statutory provision that members of the executive committees of unions cannot be removed from their posts.

31. Among the matters of particular concern are the murders of union leaders during the period under review and the fact that no light has been shed on some of the murders committed during earlier periods. The Mission has followed closely the conflict that arose in May 1996 between the Zacapa Municipal Employees' Union (SINTRAMUZAC) and the Mayor of Zacapa, Carlos Vargas y Vargas (see A/52/330, annex, para. 44). There has been no progress in the investigation into the murder of Hugo Duarte Cordón, a former official of that Union (see A/53/853, annex, para. 13). The same is true of the investigation into the murder of Robinson Manolo Morales Canales, former Secretary of SINTRAMUZAC, who was murdered on 12 January 1999. To date there has been no light shed on the circumstances surrounding the murder, although one of the alleged perpetrators has been identified. In the case of Baldomero de Jesús Ramírez, former Financial Secretary of the Municipal Employees' Union in Santa Lucía Cotzumalguapa, Escuintla, the Mission noted that his disappearance, on 17 June 1999, coincided with serious labour conflict between the Union and the Mayor. His body was found five days later bearing signs of torture. To date there has been no substantial progress in the criminal investigation.

32. On 27 September, BANDEGUA, the banana company that is a subsidiary of Del Monte, fired 897 workers from three estates in the department of Izabal. That decision, which was described by the Ministry of Labour and Social Welfare as a violation of the existing collective agreement, prompted the Izabal Banana Workers Union, faced with a stalemate in tripartite negotiations, to schedule protests in Morales, Izabal, for 14 October. The night before, a large group of heavily armed men, among them some well-known local businessmen, burst into union premises and, using force, took the Secretary-General, other union leaders and the Mayor of Morales to a radio station, where they were ordered to announce a suspension of the protests, before the cameras of a local television channel. On their return to union premises, they were put in front of a video camera and forced to resign their union posts and their jobs with BANDEGUA. Lastly, on pain of death, they were told to get out of the region, which they did with their families. Despite two appeals to the Morales National Civil Police to intervene and dispatch police vehicles to the scene, the security forces did nothing. Several labour and union organizations, in addition to the relevant ministry, came out in public and condemned those deplorable developments. The Public Prosecutor's Office displayed considerable lethargy in the initial stages of the investigation. The facts were reported to the Office of the Counsel for Human Rights, but at the time this report was being finalized there was no information on any pronouncement or resolution on the part of that Office.

33. Even if the events in Morales can be described as isolated and not reflecting the state of labour relations in Guatemala, by their extreme seriousness they are an affront to the rule of law, and they highlight the need for the Government and the judiciary to ensure full enjoyment of the right to organize as a prerequisite for progress in the development of a culture of dialogue and peaceful settlement of conflicts.

34. The Mission received other allegations of serious violations of the freedom of association and the freedom to exercise union rights. On 7 September, it received a complaint from the Judiciary Staff Union against the Supreme Court of Justice over the unlawful, mass dismissal of 508 workers, with effect from 1 September. The decision of the Supreme Court was based on a resolution issued by

the Constitutional Court on 8 July 1999, declaring illegal a strike by judiciary staff between 19 March and 7 April 1996. According to the complaint, the measure violates the right to organize, inasmuch as the Supreme Court acted as both judge and party in the proceedings related to the conflict, ruling on questions in which it had an interest, and that the dismissals were motivated by political factors, without application to a judge for authorization to proceed, as provided in article 379 of the Labour Code and in the subsequent articles; the dismissed employees included all the members of the Executive Committee of the Union and the leaders of its 21 departmental chapters, although, under article 12 of the collective agreement on terms of employment and article 223 of the Labour Code, their union responsibilities should have protected them from dismissal. The Mission immediately began the respective investigation.

35. No progress has been made in bringing domestic legislation into line with international norms ratified by Guatemala. This is a matter still to be addressed by the State, as is the need for a policy of encouraging collective negotiation and changes in the judiciary and the Ministry of Labour, for the sake of effective protection of the right to organize. Prompt implementation of such measures would permit positive progress towards full respect for this constitutional right.

Commitment to promote rules and mechanisms for the protection of human rights

36. One major development during the period under review was the adoption of the Act concerning protection of the dignity and comprehensive advancement of women, under decree No. 7-99 of 9 March 1999. This Act develops the commitments undertaken by Guatemala in ratifying the Convention on the Elimination of All Forms of Discrimination against Women and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.

37. Following the agreement reached between the State and the Inter-American Commission on Human Rights, decree No. 29-99 was issued, which supplements decree No. 80-98 on reforms to the Civil Code. The decree, amending article 131 of the Code, establishes the principle of gender equality in the administration of matrimonial property and, at the same time, repeals article 113, which restricted women's employment and professional opportunities, on the grounds that such activities are not detrimental to the care of children and other household responsibilities.

38. In its previous reports (see, for example, document A/52/946, annex, para.59), the Mission drew attention to the need for Guatemala to have legislation to govern adoption; during the period under review no progress was made in this respect. A new legislative initiative was put forward on 6 April 1999, but it is awaiting the issue of a ruling both by the Congressional Commission on Women, Minors and the Family and by the Commission on Legislation and Constitutional Matters.

39. In August 1996, by means of legislative decree No. 70-96, the Act for the Protection of Persons Involved in the Conduct of Judicial Proceedings and Persons Linked to the Administration of Criminal Justice was adopted. Article 20 provided that the Public Prosecutor's Office would issue a ruling within a period of not more than 90 days. This ruling was adopted on 7 May 1997 but was never published, so that it remains without effect more than three years after the act was adopted. The absence of an adequate regulatory framework is impeding the allocation of budgetary resources for protection programmes, and the limited implementation of these programmes up to now is having an adverse effect on the conduct of trials and hindering the work of the judiciary.

40. Linked with this commitment are various recommendations of the Clarification Commission. On 15 November 1999, the Commission to Follow up the Implementation of the Peace Agreements submitted to the President of the Congress of the Republic a bill on the Foundation for Peace and Harmony with the purpose of fulfilling the recommendation to establish a body responsible for implementing and monitoring the recommendations of the Clarification Commission (see document A/53/928, recommendation 84). The preliminary draft is a product of consensus with the Multi-institutional Forum for Peace and Harmony which, on 5 October 1999, through deputy Rosalina Tuyuc, had submitted a bill for the same purpose, the basic aspects of which are taken up in this proposal.

Commitment II. Commitment to strengthening institutions for the protection of human rights

41. In the Comprehensive Agreement, the parties agreed to support and strengthen the judiciary, the Public Prosecutor's Office and the Office of the Counsel for Human Rights in the exercise of their functions of protection of human rights, and to respect their autonomy and freedom of action, in view of their importance for the strengthening of the rule of law. This section of the report deals with the

measures to strengthen these institutions which were adopted during the period under review. The results of the verification of respect for the independence of these institutions are presented in the sections on commitments III, IV and VII, with an emphasis on the Xamán and Gerardi cases.

42. In 1999 the budgetary allocation for the judiciary was 366.5 million quetzales (approximately US$ 48.2 million). According to Government estimates, it is likely to close at the same amount, which would result in a better capacity for implementation. In the draft general income and expenditure budget of the nation for 2000, it is projected that the budget for the judiciary will be 456 million quetzales (approximately $60 million), which represents a real growth of 18.5 per cent compared with 1999, deducting 5.5 per cent inflation expected for 2000, thus meeting the requirement of a 2 per cent minimum allocation established in article 213 of the Constitution.

43. On 30 September 1999, the Commission on Legislation and Constitutional Matters of the Congress of the Republic issued a favourable ruling on the bill on the career judicial service based on a preliminary draft drawn up in 1997 by the Supreme Court of Justice and including the basic recommendations of the Commission on the Strengthening of the Justice System. This act was adopted on 27 October by the Congress and promulgated on 2 December 1999. In addition, the act on the civil service of the judiciary was adopted on 30 November 1999 and is awaiting promulgation.

44. In July 1999, 26 judges of the first instance and sentencing court judges were appointed from graduates of the Judicial Training School, who were the first class to have received a six-month training course before the selection examinations. The requirement of prior training and a selection examination for candidates is essential to ensure professional competence and functional independence.

45. The Congress of the Republic, for its part, made a significant effort to achieve consensus in the selection process for the judges of the Supreme Court of Justice. For the first time, various organizations of civil society participated in the process, contributing to drawing up the profile of the ideal judge and to developing selection criteria based on professional merit and ethical values. The nominating committees and the Congress both published lists of preliminary candidates and candidates from which the current members of the Court were selected; they took office on 13 October 1999.

46. During the period under review, 31 courts of the first instance, two mediation and conciliation centres, and 51 courts of the peace were established, thereby completing the process of setting up these courts in all the municipalities of Guatemala, including the villages of Salacuín (Cobán, Alta Verapaz) and Guineales (Sololá). Special mention should also be made of the establishment of the centre for the administration of justice at Santa Eulalia, which brings together the various competent institutions serving the eight most remote municipalities in the north of the department of Huehuetenango. This represents an improvement in the coverage of these services, bringing them closer to the inhabitants of rural areas and facilitating their access to justice.

47. In May the implementation of the first stage of the process of restructuring the district offices of the Public Prosecutor's Office in Guatemala, which had been begun by MINUGUA in 1995, was completed. This was accompanied by the establishment of a permanent service office and a victims' service office in each prosecutor's office. A cycle of recruitment of prosecutors' assistants by means of a public competition was also completed, and 240 new posts were filled. The opening of the district prosecutor's offices in Santa Lucía Cotzumalguapa and Villanueva should be noted. In implementation of the "Strategic modernization plan" and within the framework of the agreement signed with the coordinating body for modernization of the justice sector, United Nations Development Programme — Public Prosecutor's Office, the "Programme for the reorganization of district and municipal prosecutor's offices" is currently being carried out; the objective is, *inter alia*, to consolidate the new model of office management, career development for prosecutors, preparation and training of prosecutors, and effectiveness of criminal prosecution.

48. As of 1999, the Public Defender's Office in Criminal Matters has had its own budgetary allocation of 45.5 million quetzales (approximately $6 million) from the general budget. This allocation ensures the Office's administrative autonomy and promotes greater functional autonomy, and has enabled the Office to increase its staff, which consists of 91 public defenders country-wide, supported by a large body of official public defenders at the metropolitan level. These factors are undoubtedly contributing to a substantial improvement in the operation of the service, although progress still needs to be made in administrative organization and in terms of greater efficiency of public defenders in the programme.

49. With regard to the Government's commitment to support the initiatives of the Office of the Counsel for Human Rights designed to strengthen that Office, the Mission had previously expressed concern about the decline in the resources of that Office compared with 1998, because the budget for 1999 did not show any increase (see document

A/53/853, para. 61). The Government's proposal for the 2000 budget — 26 million quetzales (approximately $3.4 million), although seemingly insufficient, would be a slight improvement which must be supported and, if possible, increased in the forthcoming decision by the Congress of the Republic. An increase in the resources of the Office is essential for its work of promotion and protection of human rights. Despite the budgetary limitations in 1999, the Office made some significant achievements, such as its good offices in support of the implementation of the recommendations of the Clarification Commission and the introduction of human rights education in the formal educational system through an agreement concluded with the Ministry of Education (plan for a diploma in human rights for teachers in public education).

Commitment III. Commitment against impunity

Right to due process of law

50. The repeated violations of the right to due process of law are manifested in violations of the victim's procedural guarantees, including lack of penalties or inadequate penalties for crimes and human rights violations; because of the scale of this phenomenon it is one of the factors contributing to the situation of impunity in Guatemala. In order to give full consideration to the institutional components of impunity, the situation with regard to the right to due process of law is also analysed in relation to this commitment.

51. During the period under review there was a significant increase in confirmed violations of the right to due process of law: 155 complaints were admitted, involving 1,657 alleged violations. There are 3,665 confirmed violations, of which 2,423 (66.12 per cent) arose from cases of massacres and disappearances such as those of Xamán, Plan de Sánchez, Panzós, the secret military archive and others. It is indicative of the situation of impunity that of the violations of due process which were confirmed during the period under review, 31.8 per cent involve the legal obligation of the State to investigate and punish crimes and violations and about 25.4 per cent are concerned with obstruction by State agents of the work of the police, the Public Prosecutor's Office and the judiciary.

52. In recent years there has been a quantitative improvement in access to justice, especially in the interior of Guatemala, as a result of the broadening of the territorial coverage of the bodies responsible for the administration of justice and the deployment of over 17,000 members of the National Civil Police. Owing to the absence of a coordinated and integral plan to deal with impunity, however, in qualitative terms the response of the State system to the phenomenon of crime and human rights violations has not been proportionate to their increased incidence. This contributes to the persistence of the perception of widespread impunity.

53. Since its first reports on human rights, the Mission has indicated that impunity is the greatest obstacle to the effective enjoyment of human rights in Guatemala. It has also noted the inability of the judicial system and of the auxiliary bodies responsible for investigations to determine criminal, civil and administrative responsibility in respect of crimes with high social impact and serious human rights violations. Despite the changes which the Mission has noted in its various reports, this affirmation still holds true, and the population still has a perception of a situation of defencelessness and impunity which is significantly marring the management of the State.

54. Although the ineffectiveness of State institutions in the prevention, investigation and punishment of violations and crimes has been obvious in Guatemala for decades, it has only recently been used by people to justify actions to take justice into their own hands, as in the case of lynchings. During the period under review there was an average of over 10 lynchings a month, much higher than the 5.4 average recorded in the previous period (A/53/853, annex, paras. 16 and 64 and ff.). What at first was a sporadic practice has progressively developed into a recurrent response, not always spontaneous, to what is regarded as the lack of an effective response by the State to insecurity and crime. It should be stressed, however, that the number of deaths and injuries has declined because of better work by the authorities, especially the National Civil Police, in this respect.

55. The weakness of the institutions responsible for the investigation, prosecution and punishment of crime and the preservation of constitutional guarantees is apparent both in the National Civil Police, and in the judiciary and the Public Prosecutor's Office. As already noted above, the Mission is concerned to note that agents of the National Civil Police have participated in serious violations of the right to life, that they have direct responsibility for crimes, and that their immediate superiors have covered up these actions, obstructing their prosecution and the imposition of criminal, disciplinary and administrative penalties, thereby contributing to impunity. The ineffectiveness of the investigative machinery is contributing to the lack of punishment.

56. As to the judiciary, an illustrative case of the violation of the guarantees of due process is that of Pedro Rax Cucul, who was condemned to death; in his case, the following rights were violated: his right to be heard by a competent, independent and impartial judge who would take into account the defendant's history of mental illness; his right to be presumed innocent, since the aggravating circumstances of the crime of murder which were adduced in condemning him to death had not been verified; and his right, as a monolingual indigenous Q'eqchi', to have access to an interpreter during the court proceedings; and to an effective remedy in which the higher courts would take into account relevant questions relating to his mental health. In addition, his right to defence was violated because the counsel for the defence neglected to raise substantive questions during the oral proceedings and at the sentencing stage. Lastly, at the stage of implementation, the counsel for the defence failed to lodge appeals, on the instructions of the Public Defender's Office in Criminal Matters.

57. The judiciary has also contributed to the deterioration of the situation through the imposition of inappropriate penalties, recategorization of crimes in order to arbitrarily favour the granting of measures providing an alternative to preventive imprisonment for State agents or individuals, falsification of facts in judicial files, the inappropriate use of measures which undermine justice, lack of protection for agents of the judiciary from external threats or aggression to the detriment of the independence of judges, and tolerance of the abuse of delaying tactics which excessively prolong trials.

58. With regard to the Xamán case, on 13 August 1999 the trial court at Cobán sentenced to five years' imprisonment, commutable on payment of five quetzales a day, as perpetrators of the crime of culpable homicide, the sub-lieutenant in command of the military patrol and the 10 patrol members whose weapons were verified to have been fired. Another 14 soldiers were sentenced to four years of imprisonment, also commutable on payment of five quetzales a day, for the crime of "complicity in culpable homicide". The appeal entered by the public prosecutor's office is still pending. The verdict, rejecting the excessive use of force, did not take into account the obviously disproportionate reaction of the military patrol, classifying the action as culpable homicide and complicity in culpable homicide, the latter being a category which does not exist in the law or in legal theory. Furthermore, there was no conviction for the injuries inflicted on those who returned. These irregularities made it possible to impose a penalty of less than five years and, in application of the legislation in force, commutation of the penalty against monetary payment. The actions of the Public Prosecutor's Office and the judiciary in this case undermined the right to due process and demonstrated their hesitation in taking responsibility for the investigation and punishment of crime when the accused are members of the army.

59. At the time of drafting this report, a verdict was issued on the special appeal lodged by the prosecutor from the Public Prosecutor's Office. Division XIV of the Cobán court of appeal annulled the previous verdict, and determined that the 10 soldiers whose weapons were verified to have been fired were guilty of the crime of homicide against 11 people and the crime of gross injury against another nine people. They were therefore sentenced to 12 years of imprisonment, including nine years of incommutable imprisonment for the crime of homicide and three years which were commutable on payment of five quetzales a day for the crime of gross injury. The division also found that during the oral proceedings it had not been established that an order to open fire had been given, or that all the soldiers had fired, including the official in command of the patrol, so that it had absolved 15 of the accused military personnel, including the officer in question, ordering his immediate release. The Mission believes that in refusing to apply the criminal categorization of extrajudicial execution, the court did not adequately take into account the disproportionate reaction of the soldiers which gave rise to deaths and injuries, arguing that the patrol had not used force because it had entered the community without the misuse of force or excess of force. The criminal act consisted of firing military weapons against unarmed children, women and men.

60. In the case of the Río Negro massacre, on 7 October 1999 the trial court of El Progreso condemned to death three former patrol members and left the case open against the then commander of the military detachment of Rabinal and against the other members of the army involved. In this way an important precedent has been established in the fight against impunity. Without prejudice to the legality of this penalty, the Mission draws attention to the international trend towards abolition of the death penalty, in view of its inhumanity and because it does not help prevent the perpetration of future crimes.

61. The institutional performance of the Public Prosecutor's Office in expediting criminal proceedings and directing the investigations carried out by the National Civil Police continues to show deficiencies in the form of omissions or delays in procedures to elucidate cases, little self-initiated activity, an inability to implement the witness protection system, lack of coordination with the National Civil Police and a reluctance to take action in cases

involving agents of the State, especially members of the army.

62. The verification of cases involving human rights violations has revealed that attitudes in many of the country's prosecutor's offices are promoting impunity. These include, among others, the paralysis of cases as a result of the abandonment of the investigation or delayed judicial action, as in the Saquic case, which has been at a standstill since 1996; the concealment and failure to ensure proper custody of evidence, as in the Jorge Carpio case; the omission of expert resources and the diversion of investigative resources, obviating key hypotheses for clarifying the facts, as in the Gerardi case; the limitation of the scope of investigations to the actual perpetrators of crimes without including their accessories as well, as in the case of the extrajudicial execution of Robinson Morales; inefficient internal oversight systems that do not involve the imposition of penalties; and the absence or late initiation of internal administrative proceedings for alleged violations, as in the many cases of torture perpetrated by the National Civil Police and in the case of the disappearance of Francisco González Vásquez. Added to this is a lack of operational effectiveness illustrated, *inter alia*, by a passive approach to investigative procedures affecting the most remote rural communities. Moreover, accusations have been based on highly questionable expert reports, such as autopsies failing to meet technical requirements or ballistic tests performed on manipulated evidence, as in the Xamán case, or superfluous procedures, such as the ballistic test performed on hogs in the same case. Lastly, the Mission has noted a failure to protect witnesses and other persons involved in proceedings concerning the most serious violations of fundamental rights and criminal acts with the greatest social impact.

63. This situation, in addition to promoting the spread and popular acceptance of lynchings, has been worsened by the fact that investigations of those lynchings by the Public Prosecutor's Office have, as a rule, been merely pro forma or non-existent. This is demonstrated by the fact that the perpetrators were brought to trial in only 44 out of 90 recorded cases of lynching, even though each lynching usually involves a number of very serious offences. Moreover, in the first nine months of 1999, the Mission verified the issuance of two convictions of perpetrators of lynchings, only one of which was final.

64. Another illustration of the shortcomings of the Public Prosecutor's Office can be found in the Xamán case. On 25 November 1998, oral proceedings were opened before the trial court of Cobán and lasted more than 100 days. On 6 August 1999, the joint complainant Rigoberta Menchú Túm withdrew from the proceedings on the ground that the court was not impartial. During the public oral proceedings, the Mission verified that the prosecutor's office was not carrying out the criminal prosecution efficiently owing to an insufficient mastery of courtroom procedures, failure to prepare questions, lack of familiarity with the case and lack of a strategy for proving the accusation.

65. Another of the many cases that illustrate the attitude of reluctance and inertia on the part of the Public Prosecutor's Office when the accused are agents of the State concerns agents of the National Police. During the period, the Mission verified due process with regard to the events of 14 October 1996, when Víctor Daniel de La Roca Valladares, Jorge Luis Herrera Cárdenas and Christian Fernando Castro Ramos were chased by the police, who suspected them of driving a stolen car. The vehicle fell into a ravine. Subsequently, it was found that the car had been hit by two bullets and that the three occupants had been killed by a number of gunshots; one of them showed the gunpowder mark typical of a gunshot at point-blank range. A number of cartridge cases from the weapon of one of the police officers, Otto Raúl Morales García, were found inside the vehicle. Despite this piece of evidence, and even though the scene of the crime was found to have been evidently altered by the officers involved, the Public Prosecutor's Office successfully requested that the proceedings should be set aside on the ground that the merits of the case were insufficient to hold the police officer responsible.

66. Another example of this attitude of the Public Prosecutor's Office in cases involving high-ranking military or police authorities is the trial for the kidnapping and enforced disappearance of the Portillo family. On 1 April 1998, Adriana Portillo lodged a complaint with the Public Prosecutor's Office concerning the enforced disappearance, in 1981, of six members of her family, including two daughters aged 10 and 9 years, respectively. This is a classic case of enforced disappearance which was brought to the attention of the Clarification Commission. The proceedings were brought against Donaldo Álvarez Ruiz, former Minister of the Interior; Germán Chupina Barahona, former Director of the National Police; Manuel de Jesús Valiente Téllez, former Chief of the Judicial Police; and Pedro García Arredondo, former Chief of Unit 6 of the National Police and current mayor of Nueva Santa Rosa. Even though most of the accused are no longer agents of the State, the investigation was inexplicably assigned to the Office of the Prosecutor for Administrative Offences. In June 1998, that Office sent the judicial record to the Court of Appeal, considering that it might come under the National Reconciliation Act. The Fourth Division rejected this

interpretation and ordered an investigation, after which the prosecutor requested information from the institutions concerned. The Ministry of Defence and the National Civil Police replied that they had no relevant information. As at the end of the reporting period, the Criminal Investigation Service of the National Civil Police, which is responsible for the investigation, has not taken any useful steps or issued any report. The case file contains only the initial submission from the Public Prosecutor's Office requesting the case's assignment to a court. At the complainant's request, a new prosecutor was appointed.

67. On 20 May, The National Security Archive, a non-governmental organization in the United States of America, released a document entitled "Death Squad Dossier" containing information on the 1983 kidnapping and extrajudicial execution of 183 people in the capital city by an army unit. Two organizations of relatives of the disappeared, Familiares de Detenidos Desaparecidos de Guatemala (Relatives of Disappeared Detainees in Guatemala) and Grupo de Apoyo Mutuo (Mutual Support Group), submitted complaints to the Public Prosecutor's Office and requested the appointment of one or several special prosecutors to investigate them. The Public Prosecutor's Office distributed the complaints among the 35 prosecutor's offices in the metropolitan district, giving each of them four or five cases. The head of one of those offices was designated as the coordinator of the investigation, but was not given special powers or instructions on his specific functions. This strategy has promoted a lack of coordination and the multiplication of the investigative procedures assigned to various prosecutor's offices, and has not facilitated the investigation of the hypothesis concerning the instigator of the crime. The army, whose members are implicated, has not cooperated with the investigation, nor has the National Civil Police as the investigating entity. No relevant steps are known to have been taken in the investigation, nor has any progress been made in elucidating the facts.

68. The case of Monsignor Juan Gerardi is another example of the ineffectiveness of the Public Prosecutor's Office and of other institutions for the administration of justice in making progress in determining individual and institutional responsibility. The Mission noted many flaws in the action taken by the Public Prosecutor's Office, such as the lack of transparency in the transfer of evidence from the former prosecutor in the case, Otto Ardón, to the former prosecutor Celvin Galindo, as a result of which part of the evidence and papers from the file relating to the accused soldiers were lost. The Mission also noted an unjustified delay in the conduct of investigative procedures, a lack of initiative and of action to bring the case to trial, a failure to take precautions against the persons accused and serious deficiencies in the witness protection system.

69. Nonetheless, the Mission appreciates the fact that, as prosecutor, Celvin Galindo allowed the subjects of the judicial proceedings to have access to the investigation, incorporated the hypothesis of instigation by agents of the State and the political motive into his investigation and promoted inter-agency coordination with the judiciary.

70. The relevant cases which the Mission has cited in previous reports to illustrate violations of due process and of the commitment against impunity remain at a standstill. These include the trials for the murders of Epaminondas González Dubón and Apolo Carranza, as well as the enforced disappearances of Juan José Cabrera, alias "Mincho", Ricardo II Figueroa and Isaac Valdés Mayén. In the Jorge Carpio case, the two persons convicted of murder were released owing to deficiencies in the investigation conducted by the Public Prosecutor's Office and the inadmissibility of the evidence owing to the break in the chain of custody. In the case of the murder of Manuel Saquic, a pastor, the last action taken by the Public Prosecutor's Office was in September 1996 and the arrest warrant against Víctor Román still has not been executed. In the Myrna Mack case, the many appeals lodged by the accused and the reluctance of trial courts to accept competency have had a dilatory effect that has hindered the progress of the trial and affected the complainant's right to be heard within a reasonable period. In the Nicholas Blake case, the trial was referred back to the court of first instance; the oral proceedings are to begin again in January 2000. The Efraín Bámaca case was dismissed in March 1999. In the case of the extrajudicial execution of Mario Alioto, a student, the Criminal Division of the Supreme Court, in March 1999, confirmed the Court of Appeal's acquittal of Danilo Estuardo Parrinello, former Minister of the Interior; Mario Alfredo Mérida González, former Deputy Minister of the Interior; and Salvador Figueroa, former Chief of the National Police.

71. The army's conduct has also been an important factor in the persistence of impunity in Guatemala, though to a lesser degree than in previous reporting periods. The Mission has verified the existence of acts of intimidation against victims, witnesses and those responsible for the administration of justice, as in the Xamán, Johnny Clark Gálvez and Sas Rompiche cases, as well as systematic refusals to cooperate and actions to obstruct investigations in cases of human rights violations allegedly involving members of the armed forces. One example of this is the Gerardi case, in respect of which the Minister of Defence

initially denied that members of the Presidential General Staff had been present at the crime scene; this statement was subsequently found to be false. Meanwhile, the Presidential General Staff has provided inaccurate or distorted information and has discredited witnesses who have linked members of that institution to the crime.

72. During the period, the crisis in the prison system and its effect of promoting impunity have been apparent. Repeated escapes from prison have caused great shock and alarm in the population owing to the known collaboration of agents of the State or to the evident insufficiency of resources for the transfer and custody of convicts. This has facilitated escapes by prisoners convicted of very serious crimes, such as the kidnappers who escaped from the Pavón prison farm and the case of the preventive detention centre in Huehuetenango, where, condoned by agents of the National Police and the army, 12 former civil patrol members convicted in the Colotenango case escaped and are still at large. Even though their whereabouts are known, they have not been recaptured.

Commitment IV. Commitment that there are no illegal security forces and clandestine structures; regulation of the bearing of arms

73. The Mission has continued to record cases revealing the subsistence of illegal security forces linked to local public officials, especially certain mayors, and in the service of private individuals. According to the information available, members of these groups are often former members of intelligence agencies, public security forces or paramilitary or para-police groups. These entities operate outside the law and may come to acquire sophisticated equipment such as high-powered offensive weapons and communications equipment. They are often used for criminal purposes and carry out acts of intimidation, physical elimination of individuals and "social cleansing" operations. Thus, for example, the Mission has verified that the illegal group known as "Los Chuchos" (see A/53/853, annex, para. 72), linked to the mayor of Nueva Santa Rosa, is still active. There are also signs pointing to the involvement of the security force of the mayor of Santa Lucía Cotzumalguapa in the death of a trade unionist in that community.

74. Given the climate of insecurity affecting the population and, especially, the phenomenon of kidnapping, the State has allowed individuals or groups outside the competent institutions to take part in activities that should be carried out by police officers, prosecutors and judges. One example of this is the Ordóñez Porta case, in which members of military intelligence participated in procedures that properly belonged to the investigation stage; and the Sebastiano Crestani case, the verification of which reveals strong indications that an unofficial investigation was conducted by agents of the State not authorized to do so, allegedly with the acquiescence of high-ranking government authorities. On the pretext of supporting the victims, these individuals and groups are acting outside the official justice system.

75. Upon beginning its activities, the Mission verified that most human rights violations were committed by military commissioners and members of Voluntary Civil Defence Committees. After these groups were demobilized, the Mission received information on their reorganization and on the strong social control which they continued to exercise in their communities (see A/52/330, annex, paras. 69 and 70, and A/52/946, annex, para. 82). The Mission has observed cases in which both former Voluntary Civil Defence Committee members and military commissioners maintain contacts with military authorities. The most serious case took place in Colotenango, Huehuetenango, where, following meetings between former patrol members from Xemal and La Barranca and members of the army, a mob led by former Voluntary Civil Defence Committee members facilitated the escape, from the jail in which they were being held in the custody of the National Police, of 12 former patrol members sentenced to 25 years' imprisonment for homicide and assault.

76. The Mission is also concerned about its finding that members of these groups have led and participated in lynchings resulting in death, such as those which took place on 18 May in Tzuatzabé, Santa Lucía La Reforma, Totonicapán; on 2 and 3 May in the canton of Los Planes, Tajumuc, Chiantla, Huehuetenango; and on 24 January in El Afán, Playa Grande, Ixcán, Quiché. The Mission will continue to pay special attention to the commitment that these groups will not re-establish institutional relations with the army, that their new forms of association do not imply the restoration of this relationship and that they will not be used for other purposes. The Mission will also continue to verify that these groups do not lead to the formation of illegal security forces or clandestine structures.

77. The Mission has noted the emergence of an alleged irregular armed group calling itself the "Frente Rebelde del Pueblo" ("People's Rebel Front") in the department of Quetzaltenango, which has engaged in extortion, theft and the burning of agricultural products. According to the verification carried out to date, it is not at all certain that this group intends to promote insurgency, given that the actions

attributed to it are essentially indistinguishable from ordinary crimes. The Mission notes that, in the recent disappearance of two members of this armed group, the evidence points to the action of private property guards, and the participation or condonation of agents of the State cannot be ruled out.

78. Currently, only 76 private security companies are authorized to operate under the Private Police Act in force (Decree No. 73-70); 100 more companies are operating without the governmental approval required by law. Also of concern is the deficiency of State control in the area of arms and ammunition. The bearing and possession of offensive weapons by private individuals, private security companies, armed escorts and property guards are still common in Guatemala. The wide availability and diversity of munitions available on the market, some of which are highly lethal, are well known, yet there are no strict controls over the companies that market and distribute them. Arms smuggling and illegal arms trafficking are promoted by the permeability of borders and the lack of training and qualification of fiscal, customs, police and military personnel. As a result of the lack of State supervision in these areas, private security agencies are an attractive option for former agents of the State who have taken part in human rights violations or who have been expelled from their institutions for having committed crimes. Indeed, former members of the now-defunct Mobile Military Police hired by private security companies have been involved in offences such as bank robberies.

Commitment VII. Safeguards and protection of individuals and entities working for the protection of human rights

79. Since the Mission's inception, the number of complaints admitted in relation to threats and intimidation has tended to decline. However, starting from the period covered by the previous two reports (see A/52/946, annex, para. 90, and A/53/853, annex, para. 76), a gradual increase in such complaints has been recorded, primarily in relation to individuals and entities working for the protection of human rights. This trend has continued in the current period, and may be linked to the submission of the report of the Clarification Commission and to certain judicial proceedings having a strong impact on public opinion.

80. Most of the complaints received concern entities and officials involved in judicial proceedings in the most serious and well-known cases of human rights violations, in which members of the army are allegedly involved or on trial. A high percentage of these complaints are related to agents of the State.

81. During the period, acts of intimidation and threats continued against members of the Catholic Church, including Monsignor Próspero Penados del Barrio, Monsignor Mario Ríos Montt and other individuals linked to the elucidation of the case of Monsignor Gerardi. The Mission also verified that Judge Henry Monroy of the Second Court of First Instance had been pressured, *inter alia*, by Howard Yang, the former head of the Department of Strategic Affairs. Mynor Melgar Valenzuela, an attorney in the Human Rights Office of the Archdiocese of Guatemala, was harassed on the telephone days before a sworn statement was taken from senior members of the Presidential General Staff at the request of Mr. Valenzuela as joint complainant in the case. The special prosecutor for the case, Celvin Galindo, also reported having received threats.

82. On 10 and 12 March, officials of the Public Prosecutor's Office were followed and harassed by unidentified persons in a vehicle while they were investigating the deaths of Johnny Clark Gálvez, a lieutenant, and Sandor Medina Ortiz, a cadet. It was subsequently determined that the vehicle's licence plates belonged to the Ministry of the Interior and had been assigned to the presidential palace. In the same case, two members of the army who had been summoned by the prosecutor to appear before the court blamed the prosecutor, in writing, for anything that might happen to them, in a manner which the prosecutor judged to be intimidating.

83. In the investigation of the murder of Myrna Mack, it has been found that acts of intimidation have made judicial officials somewhat reluctant to proceed with the case, thereby altering and delaying the normal course of the proceedings.

84. The Mission also noted acts of harassment in connection with the Xamán case. During the hearings in the trial, members of the civil affairs division of military zone 21 were observed in the crowd that was demanding the release of the accused.

85. During the period under review, numerous complaints were made by prosecutors and judges handling prominent cases. The intimidating effect of the threats received was intensified by the feeling of defencelessness experienced by the subjects of judicial proceedings, owing to the State's inability to take measures to protect them. For example, on 12 February, the judge of the court of first instance in Santa Cruz del Quiché was the object of threats, after which it was

discovered that State bodies had not provided adequate protection. The limited investigation by the Public Prosecutor's Office focused on the alleged authors of the threats, with no investigation being carried out that might lead to charges being brought against the alleged instigator of the threats, despite the existence of sufficient evidence of the latter's participation.

86. The Mission reiterates the need for the Government to take urgent measures to honour its commitment to guarantee the protection of individuals and entities working for the promotion and protection of human rights and the duty of the State to investigate promptly and diligently complaints made by such individuals and entities.

III. Final observations

87. As this report indicates, the number of human rights violations reported during the period under review increased markedly in comparison with the previous reporting period. This significant increase is due in part to the fact that 66.12 per cent of all violations of the legal obligation of the State to prevent, investigate and punish stem from the follow-up to the massacres and disappearances which occurred in the period before the armed conflict was brought to an end, such as, *inter alia*, the Xamán, Plan de Sánchez, Panzós and secret military archive cases.

The judiciary and the Public Prosecutor's Office

88. This worsening situation is attributable mainly to the judiciary and to the Public Prosecutor's Office, which have the responsibility under the Constitution to investigate, prosecute and punish. In this connection, the situation during the period under review confirmed the urgent need to improve the performance of justice officials, whether prosecutors or judges. This requires both an increase in the quantitative presence in the national territory of justice institutions and an improvement in the quality of justice officials. The passage of the Career Judicial Service Act and the Civil Service Act of the Judicial Branch represent the fulfilment of two important commitments of the Peace Agreements and progress towards the provision of a better quality of service by the State. In addition to the legal framework, efforts are needed in two areas in order to improve the performance of justice officials: a firm commitment to the promotion of greater professionalism among judges and prosecutors and the fostering of a culture of independence. Formidable obstacles exist in both of these areas. Training activities are restricted by the low level of academic training provided by faculties of law. The promotion of a culture of independence runs counter to the culture of dependence that is rooted in an institution which, for decades, remained passive in the face of the abuses committed by the de facto powers or were accomplices to those abuses. It is hoped that the new Supreme Court which was elected on 12 October 1999 would resolutely tackle this twin challenge.

89. It is essential for the Public Prosecutor's Office to conduct the criminal investigation which it is required to do under the law and to ensure that its actions are effectively coordinated with those of the National Civil Police. As previously stated in earlier reports, the Mission regrets that this institution, which by definition should take firm action to prevent the perpetuation of impunity in the country, has on numerous occasions failed to discharge its most basic responsibilities.

Executive branch

90. The Public Prosecutor's Office and the judiciary are not the only bodies responsible for the fight for an effective and independent justice system. Indeed, the weakness of these two bodies is compounded by the attitude of institutions of the executive branch which refuse to fully cooperate with the justice system when agents of the State are involved or, even worse, when they use various means to exert pressure on and to interfere directly in the judicial process. In two typical cases, such as those of Xamán and Monsignor Gerardi, this lack of cooperation or interference has been blatant. The independence of judges and prosecutors is a shared responsibility. The highest authorities of the Public Prosecutor's Office and of the judiciary, in their capacities as guarantors of the independence or autonomy of the bodies which they head, are required to respect that independence. The Government must also demonstrate its unambiguous support for justice officials, by denouncing and severely punishing those responsible for interference or for failing to cooperate with the justice system.

91. Special consideration should be given to the issue of the parallel investigations carried out by agencies that are answerable to the Government. In previous reports, the Mission severely criticized the involvement of army units in anti-kidnapping activities that lacked any legal basis and during which grave violations of human rights, such as forced disappearances, took place. During the period under review, new evidence came to light of a practice of parallel investigations carried out with the participation of intelligence services without the knowledge of the judicial authorities. In the Gerardi case, there is strong evidence of

the participation of the Strategic Affairs Secretariat and military intelligence. As in the case of anti-kidnapping operations, an attempt has been made to justify the existence of parallel investigations by citing the higher interest of the State in solving particularly serious cases. Nevertheless, after reviewing the course of the official investigations during the year which followed the murder of Monsignor Gerardi, the Mission notes that these parallel investigations have had the effect of fragmenting, disrupting and confusing the work of the Public Prosecutor's Office, thereby perpetuating impunity for the crime. A similar situation has been noted in the parallel investigations carried out in the Ordóñez Porta case. The Mission recommends that the Government should rigorously enforce the prohibition contained in the Peace Agreements against the involvement of military intelligence organizations in civilian matters, particularly in judicial investigations. This involvement is particularly detrimental when one of the allegations is precisely the responsibility of agents of the State, military or ex-military personnel, since parallel investigations can subvert the judicial investigation and result in a cover-up. The Mission will be monitoring the situation to see whether the Government takes the necessary measures to strictly enforce this prohibition by, *inter alia*, including rules to this effect in the doctrine and system of military instruction. The Mission also attaches high priority to the establishment of the Division of Civil Intelligence of the Ministry of the Interior, which should be staffed with new personnel.

National Civil Police

92. During the reporting period, the deterioration in the human rights situation was also due to the actions of the National Civil Police. It should be mentioned, however, that the Mission has noted improvements in its performance, particularly a more active policy to combat the phenomenon of lynching, which has had positive results. It has also noted a reduction in violations stemming from the excessive use of force in eviction or similar operations resulting in large numbers of victims. At the same time, the Mission has noted with concern the increase in cases of torture associated with the investigation of crimes and offences, especially in certain specialized bodies such as the Criminal Investigation Service. The Mission made a recommendation on this subject in its previous report (see A/53/853, para. 90). This situation is due in part to the deficiencies of the Office of Professional Accountability. With approximately 70 staff members, this Office, which is located in the capital, is required to serve more than 17,000 police officers throughout the country. In addition to an increase in staffing, the Office is in urgent need of more modern technical infrastructure in the form of high-performance, efficient and reliable information processing and storage systems. The internal mechanisms for monitoring the National Civil Police and upgrading the capacities of the police academy must also be strengthened in order to meet the challenge of the purification of an institution in which the new culture of public service and respect for the law clashes with the traditions of abuse followed by many former members of the former National Police.

Lynchings

93. The persistence, spread and seriousness of the phenomenon of lynchings urgently requires coordinated action on the part of the State institutions concerned. In addition to greater effort by the authorities, legislative measures must be adopted that reconcile community-based mechanisms for resolving conflicts with the formal justice system so that the procedures used would better respond to the needs of the population concerned.

A human rights policy

94. The worsening human rights situation in Guatemala, three years after the signing of the Peace Agreements, gives cause for concern. Some of the measures needed to reverse this trend are of a medium- and long-term nature. Imparting greater professionalism and dignity to the judicial career requires changes at all levels, including changes in mentality. It also requires a change in mentality to no longer consider the army as the last recourse in serious cases of impunity. Changes such as these will not be achieved without political will on the part of the national leadership. In its reports, the Mission stressed the need to adopt measures to combat the use of threats or the fear of reprisals against individuals and officials who play key roles in criminal proceedings and the fight against impunity. It therefore welcomed the Act for the Protection of Persons Involved in the Conduct of Judicial Proceedings and Persons Linked to the Administration of Criminal Justice. Three years after the passage of this Act, the Public Prosecutor's Office should speedily conclude the formalities required for the enforcement of its provisions and proceed to establish an office for protection endowed with adequate budgetary resources with a view to ensuring the effective functioning of the system.

95. Despite the Mission's recommendations (see A/52/946, annex, para. 108), no progress has been made towards fulfilling the commitment to perfect the norms and mechanisms for the protection of human rights through the ratification or signing of new instruments. The Mission

therefore once again calls upon the Government to deposit with the Secretary-General of the United Nations its instrument of ratification of the Optional Protocol to the International Covenant on Civil and Political Rights and to recognize the competence of the Committee Against Torture and the Committee on the Elimination of Racial Discrimination, so that the respective Committees could receive communications from individuals. The Mission once more stresses the need for the Government to complete the process of ratification of the Inter-American Convention on Forced Disappearance of Persons, by depositing the relevant instruments with the Organization of American States, as an effective means of fostering in the international community recognition of enforced disappearance as a crime against humanity.

96. With regard to the ownership, use and bearing of firearms by individuals, there is clearly an urgent need for the State to have effective and reliable mechanisms of control, given the indiscriminate proliferation of this type of weapons and their widespread marketing. To that end, the commitment to reform the Arms and Munitions Act must be implemented as soon as possible.

97. In view of the worsening situation in recent times, the Mission reiterates the urgent need for an active and coherent human rights policy, as a short-term factor that would enable Guatemala to return to the path of greater respect for human rights. In its resolution 54/99 of 8 December 1999 on the peace process in Guatemala, the General Assembly called upon the Government to "redouble its efforts in the promotion of human rights, taking into account the recommendations contained in the reports on human rights of the United Nations Verification Mission in Guatemala". The Mission will carefully monitor the actions of the State authorities to ensure compliance with these requirements.

Appendix

Statistics on human rights violations during the period from 1 January to 30 September 1999

		Reported in the period under review				*Reported in earlier periods*		*Total confirmed in the period under review*
		Complaints admitted	*Violations alleged*	*Violations verified*	*Violations confirmed*	*Violations verified*	*Violations confirmed*	
Right to life (A)								
A1	Extrajudicial executions or deaths in violation of legal guarantees	27	39	18	13	48	34	47
A2	Attempted extrajudicial executions	5	7	4	4	14	9	13
A3	Death threats	27	63	37	11	16	6	17
	Total	**59**	**109**	**59**	**28**	**78**	**49**	**77**
Right to integrity and security of person (B)								
B1	Torture	7	29	24	22	7	5	27
B2	Cruel, inhuman or degrading treatment	17	39	35	32	15	14	46
B3	Ill-treatment	20	40	14	13	31	22	35
B4	Excessive use of force	2	6	4	2	106	2	4
B5	Other threats	18	99	67	7	220	8	15
	Total	**64**	**213**	**144**	**76**	**379**	**51**	**127**
Right to individual liberty (C)								
C1	Arbitrary detention	12	62	42	38	35	18	56
C2	Detention in violation of legal guarantees	4	60	47	47	23	20	67
C3	Kidnapping	0	0	0	0	2	2	2
C4	Hostage-taking	0	0	0	0	0	0	0
C5	Enforced disappearance	1	2	0	0	0	0	0
C6	Forcible, unjust or discriminatory recruitment	0	0	0	0	0	0	0
	Total	**17**	**124**	**89**	**85**	**60**	**40**	**125**
Right to due process (D)								
D1	Right to be presumed innocent	9	109	94	91	199	196	267
D2	Right to be judged by a competent, independent and impartial judge	5	11	5	5	516	514	519
D3	Right to be tried within a reasonable time	3	7	2	2	14	14	18
D4	Right to defence and to be assisted by a lawyer	5	102	96	96	110	110	206
D5	Right to be assisted by an interpreter	2	7	3	2	2	1	3
D6	Right not to be compelled to testify against oneself	0	3	3	3	0	0	3
D7	Right of appeal	1	3	3	0	100	100	100
D8	Right of habeas corpus	1	4	4	4	0	0	4
D9	Right of access to the justice system	14	22	9	6	178	173	181

	Reported in the period under review				Reported in earlier periods		Total confirmed in the period under review
	Complaints admitted	*Violations alleged*	*Violations verified*	*Violations confirmed*	*Violations verified*	*Violations confirmed*	
D10 Obstruction of the work of the National Police, the Public Prosecutor's Office and the judiciary	32	76	40	39	904	895	934
D11 Legal duty of the State to investigate and punish	81	1 212	342	239	1 152	927	1 166
D12 Right to compensation	0	0	0	0	429	1	1
D13 Legal guarantees for the victim	2	101	83	93	153	152	245
Total	**155**	**1 657**	**694**	**582**	**3 757**	**3 083**	**3 665**
Political rights (E)							
E1 Right to have access to public service	0	1	0	0	1	1	1
E2 Right to be registered on the electoral roll	7	262	261	260	50	0	260
E3 Right to vote	1	3	3	0	0	0	0
E4 Right to hold political office	0	1	0	0	0	0	0
Total	**8**	**267**	**264**	**260**	**51**	**1**	**261**
Right to freedom of expression (F)	**1**	**5**	**5**	**3**	**1**	**1**	**4**
Right to freedom of association and assembly (G)							
G1 Right to freedom of association	2	132	0	0	19	1	1
G2 Right to organize	6	871	355	355	0	0	355
G3 Freedom of assembly	0	0	0	0	1	1	1
Total	**8**	**1 003**	**355**	**355**	**20**	**2**	**357**
Right to freedom of movement and residence (H)							
H1 Deprivation of documents	0	0	0	0	0	0	0
H2 Enforced population displacement	2	100	100	94	0	0	94
H3 Freedom of movement	1	1	1	1	0	0	1
Total	**3**	**101**	**101**	**95**	**0**	**0**	**95**
Violations of the Agreement on Identity and Rights of Indigenous Peoples (P)							
P1 Freedom of thought, conscience and religion	0	1	1	1	0	0	1
P2 Use of indigenous languages	0	0	0	0	50	0	0
P3 Use of indigenous dress	1	69	69	69	0	0	69
P4 Right to register names in indigenous languages	0	0	0	0	0	0	0
Total	**1**	**70**	**70**	**70**	**50**	**0**	**70**
Grand total	**316**	**3 549**	**1 781**	**1 554**	**4 396**	**3 227**	**4 781**